

# Exhibit D

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### Claimants.

vs.

J. EZRA MERKIN,

**Respondent.**

Pryor Cashman LLP  
Seven Times Square  
New York, New York 10003-6569

August 11, 2011

9:09 a.m.

## B E F O R E:

JOHN R. HOLSINGER, ESQ. - The Chairman  
THOMAS J. FLEMING, ESQ. - Panel Member  
DONALD S. ZAKARIN, ESQ. - Panel Member

Amy Klein Campion - Hearing Reporter

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<p>1        J.E. Merkin - Direct/Levander  2        were supposed to get it back at the value  3        we were supposed to get it back.  4            And, if anything, there were  5        occasions when we wanted to invest  6        additional capital and he didn't take it.  7        Q.    Mr. Bamberger tried to suggest  8        to you before something about how you had  9        a one-year lockup versus Fairfield  10      Greenwich's 30 days.  11           Do you remember that series of  12      questions?  13      A.    I do.  14      Q.    I think Mr. Bamberger is mixing  15      apples and oranges.  16           Could you tell us what the  17      nature of Ascot's investment was with  18      Madoff?  19      A.    Ascot had managed account  20      agreements with the Madoff office. Those  21      gave us daily outs.  22           We had other arrangements with  23      our investors. But one shouldn't confuse  24      Ascot's investors and Ascot's contractual  25      arrangements as part of, say, the limited</p>	<p>670</p>	<p>1        J.E. Merkin - Direct/Levander  2            But I certainly knew that Madoff  3        had lots of managed account clients, or  4        his firm had a lot of managed account  5        clients.  6            I wouldn't assume it's different  7        from a managed account at Goldman Sachs  8        account. You can call up any day and say  9        I want the money back.  10      Q.    I also want you to address some  11      of the questions and suggestions and  12      arguments Mr. Bamberger has made about  13      your due diligence.  14           Mr. Bamberger has questioned  15      whether Madoff's low volatility returns  16      were a red flag to you, in essence.  17           Do you agree that they were any  18      kind of warning sign?  19      A.    No.  20      Q.    Why not?  21      A.    Because I had -- have spent time  22      professionally looking at any number of  23      money managers who run very low volatility  24      portfolios that perform at Madoff-like  25      percentages of positive months over</p>	<p>672</p>
<p>1        J.E. Merkin - Direct/Levander  2      partnership agreement, with what we were  3      doing with Madoff.  4            We had the right to remove money  5      from the Madoff office every single day.  6            If we were in treasuries it was  7      a piece of cake. If we were in positions,  8      and say we needed -- just to give an  9      example -- needed to trim 20 percent of  10     the positions because we had a redemption  11     or because I wanted to do something else  12     with the money, you gave an order. These  13     were highly liquid securities. It's not  14     to say that you won't make or lose  15     something on the way out in a very small  16     away, but T+1, T+2, T+3, you get the  17     money.  18           And so the accounts were  19     extraordinarily liquid.  20           I didn't know about the Tremont  21     arrangements, but --  22      Q.    I said the Fairfield  23     arrangements.  24      A.    The Fairfield arrangements,  25     sorry.</p>	<p>671</p>	<p>1        J.E. Merkin - Direct/Levander  2      periods of decades, and was very  3      interested in those, precisely because I  4      thought they made a great deal of sense  5      for the two investment committees I was  6      chairing, the Yeshiva University  7      Investment Committee and UJA Investment  8      Committee.  9           So looking at low volatility  10     fund management was a significant theme in  11     the office, and I knew of performances  12     that were less volatile than Madoff's and  13     had, frankly, better numbers, and I  14     certainly knew of performances that were  15     in line with his volatility.  16      Q.    Could you give us the names of  17     three or four well-known funds that had  18     more than 10 years, maybe even 20 years,  19     maybe even 30 years, of track records of  20     low volatility and returns that were at  21     least as good as Madoff's?  22      A.    Well, long track records of low  23     volatility that come to mind are  24     Millennium, which probably had something  25     close to 90 percent up months, and that</p>	<p>673</p>

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<p style="text-align: right;">674</p> <p>1 J.E. Merkin - Direct/Levander 2 would probably be something like a 20-year 3 record. 4 Elliott Associates, which was 5 Paul Singer's original domestic limited 6 partnership, I think is at year -- today 7 is at year number 33 or 34 with positive 8 compounding at extraordinarily high levels 9 of positive months year after year after 10 year and period after period after period. 11 We look for these kinds of 12 funds. Those are two that come to mind. 13 I can think of more. 14 Q. What about Steve Cohen? 15 MR. BAMBERGER: Objection; 16 leading. 17 THE CHAIRMAN: What about what? 18 MR. LEVANDER: Steve Cohen. 19 MR. BAMBERGER: Objection; 20 leading. 21 THE CHAIRMAN: Overruled. 22 A. SAC is certainly one that I had 23 in mind when I said I can think of some 24 more. 25 Steve had, through into the '08</p>	<p style="text-align: right;">676</p> <p>1 J.E. Merkin - Direct/Levander 2 time. 3 MR. LEVANDER: Again, we have 4 records that corroborate what he just 5 said -- 6 THE CHAIRMAN: You can point 7 that out to us in briefs. 8 MR. LEVANDER: That's exactly my 9 intention. 10 THE CHAIRMAN: Fair enough. 11 BY MR. LEVANDER: 12 Q. Mr. Bamberger asked you about 13 Madoff skeptics. 14 Can you first tell us what your 15 view is in terms of the number of people 16 you spoke to that had very positive views 17 about Mr. Madoff versus the number of 18 skeptics? 19 A. The sheer number of people who 20 were -- who were positive about Madoff was 21 much larger in number and is a significant 22 multiple of the people who expressed some 23 skepticism. Four or five times. It is a 24 much, much larger number of persons. 25 The skeptics and the skepticism</p>
<p style="text-align: right;">675</p> <p>1 J.E. Merkin - Direct/Levander 2 period -- I can't say this for a fact, but 3 I'm guessing -- a smaller percentage of 4 down months than Madoff did, and returns 5 that probably started at twice his returns 6 and moved up from there. 7 And we're talking about periods 8 measured in decades. 9 Q. Have you ever heard of a company 10 called Baupost? 11 THE CHAIRMAN: What's the name 12 of it? 13 MR. LEVANDER: Baupost. 14 A. Baupost is managed by Seth 15 Carmen up in Boston. 16 These are all names -- 17 Millennium, Baupost -- that we used for 18 the endowments that I had recommended for 19 consideration by the investment 20 committees for their folks. 21 Seth has been doing this 22 original stuff, I think it's over 20 23 years, I think it's close to 25 years, 24 with just extremely favorable, positive 25 compounding over that entire period of</p>	<p style="text-align: right;">677</p> <p>1 J.E. Merkin - Direct/Levander 2 actually declined over time. As the 3 performance kept coming, people just -- 4 there was -- one heard less of skepticism. 5 And some of the skeptics carped 6 at Madoff. Some of that was back-biting, 7 fault-finding, and forms of competition 8 within the industry. 9 Q. Did anyone that talked to you 10 prior to December 11, 2008 ever suggest 11 that Mr. Madoff was engaged in a Ponzi 12 scheme? 13 A. No. Absolutely not. 14 Q. Mr. Bamberger has put into his 15 exhibits some statements of Mr. Markopolos 16 which he sent to the SEC prior to December 17 11, 2008. 18 Did you see anything from 19 Mr. Markopolos, or hear about 20 Mr. Markopolos, prior to December 11, 21 2008? 22 A. No. I didn't hear anything 23 about that until the end of 2009. 24 Q. Those were sent to the SEC; is 25 that right?</p>

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